

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

SB 1990

FRANK VICENCIA, CHAIRMAN

(Senate Policy Committee Vote: 8-0)

STAFF ANALYSIS OF SENATE BILL 1990 (Dills)

As Amended:

Subject: Alcoholic Beverages

Consultant: Lang

SUMMARY

Repeals existing statutes relating to alcoholic beverage fair trade pricing policies, which have been invalidated by recent court decisions.

BACKGROUND

Existing statutes, generally known as "fair trade" laws, require the filing of minimum retail and wholesale prices for alcoholic beverages by the manufacturer or his agent. In addition, those provisions prohibit the selling of alcoholic beverages at prices below the minimum retail price filed by the manufacturer.

In May 1978, the California State Supreme Court ruled that fair trade laws affecting distilled spirits and beer are in violation of the Sherman Anti-trust Act (Rice V. Alcoholic Beverage Appeals Board). That decision invalidated the sections of California law relating to the distilled spirits and beer fair trade pricing.

In addition, later court cases have invalidated wine fair trade pricing laws (Capiscean, Inc. V. Alcoholic Beverage Appeals Board) and wholesale price posting laws for wine (Midcal Aluminum, Inc. V. Baxter Rice).

DESCRIPTION OF THE BILL

This bill repeals those sections of law invalidated by the previously mentioned court cases.

COMMENTS/QUESTIONS

This bill is sponsored by the Department of Alcoholic Beverage Control in an attempt to purge existing statutes which have been invalidated, from the ABC Act.

Wine Returns:

In one court case, the court completely invalidated all of Chapter 11 of the ABC Act, even though one section (Section 24879) did not deal with fair trade pricing. That section deals with the return of wine from a retailer to a wholesaler or winegrower, and according to the ABC, should be transferred to another section of the Act.

The Department of Alcoholic Beverage Control supports the measure. There is no known opposition.

JL:eag

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PLAINTIFF'S
EXHIBIT

CASE
NO. CV04-0360P

EXHIBIT
NO. 028

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ENROLLING BILL REPORT

BILL CONTROL NO. B-80-21

ALCOHOLIC BEVERAGE CONTROL

Bills

SB-1990

Repeal of Invalidated Pricing Statutes

SUMMARY

This bill would delete various invalidated sections of law dealing with alcoholic beverage and wine fair trade contracts and price postings. It would also re-enact language dealing with the return of wine by retailers.

ANALYSIS

A. Detailed

Currently the Alcoholic Beverage Control Act contains numerous sections of law which have been invalidated by the State court system and/or United States Supreme Court. In general, the statutes affecting minimum consumer prices for distilled spirits, beer, and wine were invalidated in the course of the Corsetti case and the Capiscean case in the California State court system. Wine price postings and price-fixing statutes affecting wine have been invalidated by the United States Supreme Court in the Midcal Aluminum case.

This bill is practically a matter of clean-up legislation to delete the above mentioned invalidated sections. It also re-enacts in a more appropriate place in the statutes a section dealing with the return of wines by the retailers which was not related to the price-fixing statutes invalidated by the United States Supreme Court.

B. Cost

None.

LEGISLATIVE HISTORY

This is Bill Control No. B-80-21 sponsored by the Department of Alcoholic Beverage Control and was amended primarily to be a matter of clean-up legislation as the original bill subject matter ran into heavy opposition from the alcoholic beverage industry. The current form of the bill is now being opposed by the California Retail Liquor Dealers Association which has indicated it disagrees with the Department's interpretation that all of the sections contained within the bill have been invalidated.

REASON FOR RECOMMENDATION

The Department's recommendation is SIGN because:

1. This bill will only eliminate invalidated sections of the Alcoholic Beverage Control Act.

PE-5

SIGN

Baxter Rice, Director

(S-3221)

Kenton P. Byers, (S-1615)

8/21/80

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LEGISLATIVE INTENT SERVICE



ENROLLER BILL REPORT
DEPARTMENT OF FINANCE

AUTHOR
D111s

Form DF-440 (Rev. 5/79)

BILL NUMBER

SB 1990

SUBJECT:

DATE LAST AMENDED
June 18, 1980

This bill would delete various invalidated sections of law dealing with alcoholic beverage and wine fair trade contracts and price postings. It would also re-enact language dealing with the return of wine by retailers.

SUMMARY OF REASONS FOR SIGNATURE

This bill would eliminate certain sections of the Alcoholic Beverage Control Act which have been recently invalidated by the State and/or Federal courts.

FISCAL SUMMARY

| | 1980-81 | 1981-82 | 1982-83 | Fund |
|----------------------------|---------|---------|---------|---------|
| Alcoholic Beverage Control | -0- | -0- | -0- | General |

ANALYSIS

A. Specific Findings

Currently the Alcoholic Beverage Control Act contains numerous sections of law which have been invalidated by the State court system and/or United States Supreme Court. In general, the statutes affecting minimum consumer prices for distilled spirits, beer, and wine were invalidated in the course of the Corsetti case and the Capiscoan case in the California State court system. Wine price postings and price-fixing statutes affecting wine have been invalidated by the United States Supreme Court in the Nicola Aluminum case.

This bill is practically a matter of clean-up legislation to delete the above mentioned invalidated sections. It also reenacts in a more appropriate place in the statutes a section dealing with the return of wines by the retailers which was not related to the price-fixing statutes invalidated by the United States Supreme Court.

B. Fiscal Effect (Narrative Summary)

This bill contains no fiscal impact on the Department of Alcoholic Beverage Control.

RECOMMENDATION

Sign the bill.

DEPARTMENT REPRESENTATIVE

PRINCIPAL ANALYST

DATE

DIRECTOR

PROGRAM BUDGET NUMBER

DATE

AUG 25 1980

31480

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LEGISLATIVE INTENT SERVICE



PE-6

CHAPTER 1368

(Senate Bill No. 1990)

An act to add Section 23104.1 to, to repeal Sections 24752, 24755, and 24755.1 of, and to repeal Chapter 11 (commencing with Section 24850) of Division 9 of, the Business and Professions Code, relating to alcoholic beverages.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1990, Dills. Alcoholic beverages.

Existing statutory law contains provisions relating to alcoholic beverage and wine fair trade contracts and price posting.

This bill would specifically delete such provisions from existing statutory law, and would reenact provisions contained in the wine fair trading contracts and price posting statutes that regulate wine sales following the return of wine by a wine retailer to a wine seller.

The people of the State of California do enact as follows:

SECTION 1. Section 23104.1 is added to the Business and Professions Code, to read:

§ 23104.1. A retailer may return wine to the seller or to the successor of the seller and the seller or his successor may accept the return thereof, but the seller or his successor may not sell wine to the retailer for a period of one year after the date the returned wine is accepted or received unless any of the following exist:

- (a) The wine is returned in exchange for the identical quantity, brand, and item of wine.
- (b) It is returned pursuant to court order.
- (c) The returned wine is a brand or item of wine which has been discontinued by the seller or his successor, and in such case the wine is exchanged for the identical quantity of a brand or item of similar quality.
- (d) The wine delivered was other than that ordered by a retailer or was in a quantity other than that ordered. In such cases, the retailer may, within 15 days after such delivery, return such wine to the seller or his successor for exchange for the wine actually ordered, or may return the wine delivered in excess of the wine actually ordered. Returns under this subdivision may also be made after 15 days from the date of delivery upon written approval of the department.
- (e) The wine has deteriorated in quality or the container thereof has been damaged, or the label or container for the wine has been changed, and the wine is returned and exchanged for the identical quantity of the same brand and type of wine and size of container. For the purpose of this subdivision, "wines of the same type" means wines which are within the same class as defined in Sections 17005 to 17050, inclusive, by the Standards of Identity and Quality, Title 17, California Administrative Code, and which bear the same rate of state wine excise tax. Wines returned and exchanged pursuant to this subdivision shall have the same current posted price to retailers.



If wine or the container thereof is damaged or deteriorated, and the seller thereof has ceased to carry on a business licensed under this division and there is no successor to such business, such wine may be returned by a retailer to a winegrower or wholesaler who handles the same brand or item of wine, upon the same terms and conditions provided in this section for return of wine to a seller or his successor, after receiving approval from the department.

The approval of the department shall only be required for returns made after 15 days from the date of delivery under the provisions of subdivision (d) of this section, or returns made under the provisions of the immediately preceding paragraph of this section.

(f) As used in subdivisions (a), (c), and (e), the term "identical quantity" includes wine in metric measure containers and wine in United States standard measure containers which contain substantially the same amount of wine.

SEC. 2. Section 24752 of the Business and Professions Code is repealed.

SEC. 3. Section 24755 of the Business and Professions Code is repealed.

SEC. 4. Section 24755.1 of the Business and Professions Code is repealed.

SEC. 5. Chapter 11 (commencing with Section 24850) of Division 9 of the Business and Professions Code is repealed.

HISTORY: S.B. 1990, approved filed October 1, 1980. This bill became law without the Governor's signature, see Gov C § 9516.

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LEGISLATIVE INTENT SERVICE



SENATE COMMITTEE ON
GOVERNMENTAL ORGANIZATION
HEARING DATE: July 5, 1994

AB 988

STAFF ANALYSIS OF ASSEMBLY BILL NO. 988 (Tucker)
AS INTRODUCED MARCH 1, 1994

SUBJECT
Alcoholic Beverages

DESCRIPTION

AB 988 repeals, in their entirety, the provisions relating to fair trade contracts and price posting for distilled spirits.

RELATED LEGISLATION

AB 992 (Tucker) 1993-94 Session. Among other provisions, contains the same language in this measure. [Pending hearing before Senate Governmental Organization Committee 7/5/94]

BACKGROUND

Current law authorizes and regulates certain fair trade contracts and the filing of price lists with the Department of Alcoholic Beverage Control (ABC), as specified.

During the early 1980's, the courts found the laws for fair trade contracts, price posting and minimum pricing of distilled spirits to be violative of the federal Sherman Anti-Trust Act (Lewis-Westco & Co. v Alcoholic Beverage Appeals Board, 136 C.A. 1d 829). This measure repeals these legally unenforceable provisions from the code.

KNOWN POSITIONS:

SUPPORT: None registered as of 6/28/94.

OPPOSE: None registered as of 6/28/94.

WRITTEN COMMUNICATIONS: None

FISCAL COMMITTEE: Senate Appropriations

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BMH:dm



DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: Original
 POSITION: NEUTRAL FISCALLY; DEFER TO BUSINESS,
 TRANSPORTATION AND HOUSING AGENCY

BILL NUMBER: AB 988
 AUTHOR: Tucker

BILL SUMMARY

This bill repeals in their entirety the provisions relating to fair trade contracts and price posting for distilled spirits.

FISCAL SUMMARY

| Code/Department Agency or Revenue Type | SO LA CO RV | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) | | | Code Fund |
|----------------------------------------------|----------------------|----------------------------------------------------------|------------|------------|--------------|
| | | PROP 98 | FC 1992-93 | FC 1993-94 | |
| 2100/ABC | | -----No/Minor Fiscal Impact----- | | | 081/A3C |

COMMENTS

A. Specific Findings

Existing law authorizes and regulates certain fair trade contracts and the filing of price lists with the Department of Alcoholic Beverage Control (department).

This bill would repeal, in their entirety, the provisions relating to fair trade contracts and price posting for distilled spirits.

The intent of the bill is to repeal provisions of Chapter 10 of the ABC Act that are not legally enforceable because they violate the federal Sherman Anti-Trust Act (Lewis-Westco & Co. v. Alcoholic Beverage Control Appeals Board, 236 C.A. 3d 829).

The department indicates that Chapter 10 has been inoperative for over 12 years and this bill is merely a spot bill to clean-up Chapter 10.

Finance is neutral fiscally and defers to the Business, Transportation and Housing Agency on the bills policy implications.

B. Fiscal Analysis

This bill would not result in any fiscal impact on the department.

| | | | |
|---------------------------------------------|-----------------|-------------------------------------------|-----------------|
| Analyst/Principal (744) James A. Foreman | Date 4-15-93 | Program Budget Manager Wallis L. Clark | Date 4/15/93 |
| Department Deputy Director | | | |

| | | |
|------------------------|-------|----------------------|
| Governor's Office: By: | Date: | Position Noted |
| | | Position Approved |
| | | Position Disapproved |

BILL ANALYSIS

Form DF-43 (Rev 03/92 Buff)

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DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 8, 1994
 POSITION: NEUTRAL FISCALLY; DEFER TO BUSINESS,
 TRANSPORTATION AND HOUSING AGENCY

BILL NUMBER: AB 988
 AUTHOR: Tucker

BILL SUMMARY

AB 988 would: 1) Repeal, in their entirety, the provisions relating to fair trade contracts and price posting for distilled spirits, 2) Provide that any original on-sale license shall be \$12,000, and 3) Make other non-substantive technical and clean-up amendments.

FISCAL SUMMARY

| Code/Department Agency or Revenue Type | SO LA CO RV | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) | | | | | | Code Fund |
|----------------------------------------------|----------------------|----------------------------------------------------------|----|---------|----|---------|----|--------------|
| | | PROP 98 | FC | 1994-95 | FC | 1995-96 | FC | |
| 2100/ABC | | -----No/Minor Fiscal Impact----- | | | | | | 081/ABC |

COMMENTS

Finance is neutral fiscally regarding AB 988 and defers to the Business, Transportation and Housing Agency on the policy implications. We note that the Department of Alcoholic Beverage Control (ABC) indicates that the provisions relating to fair trade contracts and price posting for distilled spirits are not legally enforceable because they violate the federal Sherman Anti-Trust Act (Lewis-Westco & Co. v. Alcoholic Beverage Control Appeals Board, 136 C.A. 3d 829). The ABC indicates that Chapter 10 has been inoperative for over 12 years and this bill would clean-up Chapter 10.

Additionally we note that in 1992 the original fee for general licenses was increased to \$12,000 or 90 percent of the fair market value in the county, whichever is less. The ABC indicates that AB 988 would eliminate speculation since their ability to determine fair market value is limited. ABC indicates that they would not incur any additional costs as a result of AB 988.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the original version include the following significant amendments which do not change our position:

- o Provides that the fee for any original on-sale general license would be \$12,000 by deleting provisions regarding 90 percent of the fair market value as an alternative method of fee assessment.
- o Makes other non-substantive technical and clean-up amendments.

| | | | |
|-----------------------------------------------|----------------|-------------------------------------------|----------------|
| Analyst/Principal (741) James A. Foreman | Date 8/2/94 | Program Budget Manager Wallis L. Clark | Date 8/2/94 |
| Department Deputy Director Wallis L. Clark | Date 8/2/94 | | |
| Governor's Office: By: | Date: | Position Noted | |
| | | Position Approved | |
| | | Position Disapproved | |

BILL ANALYSIS
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Form DF-43 (Rev 03/92 Buff)

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DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 24, 1994
 RECOMMENDATION: Defer to Business, Transportation
 and Housing Agency

BILL NUMBER: AB 988
 AUTHOR: Tucker

Assembly: 74/1
 Senate: 38/0

BILL SUMMARY

AB 988 would: 1) Repeal, in their entirety, the provisions relating to fair trade contracts and price posting for distilled spirits, 2) Provide that any original on-sale license shall be \$12,000, and 3) Make other non-substantive technical and clean-up amendments.

FISCAL SUMMARY

| Code/Department Agency or Revenue Type | SO LA CO RV | PROP 98 | (Fiscal Impact by Fiscal Year) (Dollars in Thousands) | | | Code Fund |
|----------------------------------------------|----------------------|------------|----------------------------------------------------------|------------|------------|--------------|
| | | | FC 1994-95 | FC 1995-96 | FC 1996-97 | |
| 2100/ABC | | | -----No/Minor Fiscal Impact----- | | | 081/ABC |

COMMENTS

Finance is neutral fiscally and recommends this bill be deferred to the Business, Transportation and Housing Agency on the policy implications. We note that the Department of Alcoholic Beverage Control (ABC) indicates that the provisions relating to fair trade contracts and price posting for distilled spirits are not legally enforceable because they violate the federal Sherman Anti-Trust Act (Lewis-Westco & Co. v. Alcoholic Beverage Control Appeals Board, 136 C.A. 3d 829). The ABC indicates that Chapter 10 has been inoperative for over 12 years and this bill would clean-up Chapter 10.

Additionally we note that in 1992 the original fee for general licenses was increased to \$12,000 or 90 percent of the fair market value in the county, whichever is less. The ABC indicates that AB 988 would eliminate speculation since their ability to determine fair market value is limited. ABC indicates that they would not incur any additional costs as a result of AB 988. ABC also believes the bill would have no significant impact on its revenues. ABC is recommending signature on the bill.

| | | | |
|---------------------------------------------|----------------|-------------------------------------------|----------------|
| Analyst/Principal (741) James A. Freeman | Date 9-6-94 | Program Budget Manager Wallis L. Clark | Date 7/6/94 |
| Department Deputy Director | | | Date 9-7-94 |

ENROLLED BILL REPORT
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Form DF-43 (Rev 03/92 Pink)

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LEGISLATIVE INTENT SERVICE



leave, vacation, sick leave, or compensatory time off (CTO) in an amount necessary to approximate the employee's full net pay. Partial supplementation shall be allowed, but fractions of less than one hour shall not be permitted. Once the level of supplementation is selected, it may be decreased to accommodate a declining leave balance but it may not be increased. Reductions to supplementation amounts shall be made on a prospective basis only. The department may adopt rules for the administration and enforcement of this subdivision.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

ALCOHOLIC BEVERAGES—SALE LICENSES— FAIR TRADE CONTRACTS

CHAPTER 1028

A.B. No. 988

AN ACT to amend Sections 23954.5, 24044.5, 24048, 24072.2, 24079, and 25503.9 of, to amend and renumber Section 25511 of, to amend, repeal, and add Section 25503.28 of, to repeal Section 25503.20 of, and to repeal Chapter 10 (commencing with Section 24749) of Division 9 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1994.]

[Filed with Secretary of State September 29, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 988, Tucker. Alcoholic beverages: fair trade contracts and price posting.

Under existing law, the Department of Alcoholic Beverage Control sets the fee for an original on-sale or off-sale general license according to a specified formula, but in no event at less than \$12,000. The fee for an original on-sale general license for seasonal business is set according to another specified formula, but in no event at less than \$9,000. Existing law also provides that an original on-sale or off-sale general license for which a fee has been paid pursuant to the above provision may not be transferred for one year following its initial issuance.

This bill would instead provide that an original on-sale or off-sale general license for which a fee in excess of \$12,000 has been paid may not be transferred for one year following its initial issuance. The bill would set the fee for an original on-sale or off-sale general license at \$12,000, and would provide that such a license may not be transferred for 2 years following its initial issuance. It would delete the provision regarding an original on-sale general license for seasonal business.

Existing law authorizes the Department of Alcoholic Beverage Control, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions. Existing law also sets forth requirements for renewal of alcoholic beverage licenses.

This bill would make technical, clarifying changes in these provisions.

Existing law authorizes and regulates certain fair trade contracts and the filing of price lists with the Department of Alcoholic Beverage Control, as specified.

This bill would delete those provisions.

The Alcoholic Beverage Control Act provides that nothing in that law prohibits a winegrower from giving or selling wine, or a beer manufacturer from giving or selling beer, to certain

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Additions or changes indicated by underline; deletions by asterisks * * *

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nonprofit organizations, as specified, at prices other than those contained in schedules filed with the Department of Alcoholic Beverage Control.

This bill would provide that distilled spirits manufacturers and distilled spirits manufacturers' agents are not prohibited from giving or selling distilled spirits to those nonprofit organizations. The bill would also provide that licensed importers are not prohibited from giving or selling beer, wine, or distilled spirits to those nonprofit organizations.

Under existing law, the holder of no more than 6 on-sale licenses may hold not more than 10% of the stock of one corporate licensed beer manufacturer located in the County of Los Angeles.

This bill would delete that provision.

Existing provisions of the Alcoholic Beverage Control Act known as "tied-house" restrictions generally prohibit an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic beverage manufacturer. Existing law allows as an exception to those provisions a holder of no more than 6 on-sale licenses to own a microbrewery, and provides that the on-sale licensee shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee.

This bill would create an exception to the requirement regarding purchase from a wholesale or winegrower licensee for alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee. This bill would also allow, until January 1, 1998, a holder of no more than one on-sale license and one off-sale general license in Siskiyou County only to own a licensed beer manufacturer, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 23954.5 of the Business and Professions Code is amended to read:

23954.5. (a) An applicant for an original on-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. At the time of filing an application for a license, an applicant for an original on-sale general license for seasonal business shall accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original on-sale beer and wine license shall accompany the application with a fee of three hundred dollars (\$300). An applicant for an original on-sale beer license shall accompany the application with a fee of two hundred dollars (\$200). An applicant for an original off-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original off-sale beer and wine license or an original license not specified in this section, shall accompany the application with a fee of one hundred dollars (\$100).

"Original on-sale general license," "original on-sale general license for seasonal business," "original on-sale beer and wine license," "original on-sale beer license," "original off-sale general license," and "original off-sale beer and wine license," as used in this division, do not include a license issued upon renewal or transfer of a license.

(b) * * * The fee for an original on-sale general license or an original off-sale general license shall be * * * twelve thousand dollars (\$12,000). * * *

(c) All money collected from the fees provided for in this section shall be in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 2. Section 24044.5 of the Business and Professions Code is amended to read:

24044.5. (a) The department, in its discretion, may issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending and when all of the following conditions exist:

(1) The application has been protested pursuant to Article 3 (commencing with Section 24011).

(2) The department has made a determination based upon its investigation that the license should be issued.



(3) The applicant for the interim retail permit has filed with the department an application for issuance of a license at the premises to himself or herself.

(4) The application for the interim retail permit is accompanied by a fee of one hundred dollars (\$100).

(b) An interim retail permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. An interim retail permit may be extended at the discretion of the department for additional 120-day periods as necessary upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required by this section. Any interim retail permit issued by the department shall be automatically canceled when a final determination made by the department regarding the protests becomes effective or when the application for the retail license is withdrawn, whichever occurs first. An interim retail permit is a conditional permit and authorizes the holder thereof to sell alcoholic beverages as would be permitted to be sold under the privileges of the license for which the application has been filed with the department. Any conditions for which the applicant has petitioned pursuant to Article 1.5 (commencing with Section 23800) of Chapter 5 shall apply to any interim retail permit issued by the department.

(c) Purchase of beer and wine by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by certified check. However, the holder of an interim retail permit, who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the interim retail permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the interim retail permit.

(d) All checks received by a seller for beer or wine purchased by the holder of an interim retail permit shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

(e) Issuance of the license for which the holder of an interim retail permit has filed an application shall not be approved by the department until the holder of the interim retail permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

(f) It shall not be a violation of this section or grounds for disciplinary action for any licensee to extend credit to the holder of an interim retail permit or to receive payment from the permittee in a manner other than authorized herein unless the seller has knowledge of the fact that the purchaser was operating under an interim retail permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under an interim retail permit were posted with the notice required by Section 23985, or the holder of the interim retail permit has recorded notice as required by Section 24073, or the holder of the interim retail permit has published notice as required by Section 23986, or the holder of the interim retail permit has recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

(g) Refusal by the department to issue or extend an interim retail permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to interim retail permits.

(h) Notwithstanding any other provision of law, the department may, in its discretion, cancel or suspend summarily at any time an interim retail permit if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to interim retail permits.

(i) Application for an interim retail permit shall be on any form the department shall prescribe. If an application for an interim retail permit is withdrawn before issuance or is



refused by the department, the fee that accompanied the application shall be refunded in full, and Section 23959 * * * shall not apply. Fees received by the department for issuance of interim retail permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 3. Section 24048 of the Business and Professions Code is amended to read:

24048. Every license, other than a temporary license or a daily on-sale general license issued pursuant to Section 24045.1, is renewable unless the license has been revoked if the renewal application is made and the fee therefor is paid. All licenses expire at 12 midnight on the last day of the month posted on the license. All licenses issued shall be renewed as follows:

(a) On or before the first of the month preceding the month posted on the license, the department shall mail to each licensee at his or her licensed premises, or at any other mailing address that the licensee has designated, an application to renew the license.

(b) The application to renew the license may be filed before the license expires upon payment of the annual fee set forth in Section 23320.

(c) For 60 days after the license expires, the license may be renewed upon payment of the annual renewal fee set forth in Section 23320 plus a penalty fee that shall be equal to 50 percent of the annual fee.

(d) Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) of this section, a license that is in effect on the month posted on the license continues in effect through 2 a.m. of the 60th day following the month posted on the license, at which time it is automatically canceled.

(e) On or before the 10th day preceding the cancellation of a license, the department shall mail a notice of cancellation to each licensee who has not either filed an application to renew his or her license or notified the department of his or her intent not to do so. Failure to mail the renewal application in accordance with subdivision (a) or to mail the notice provided in this subdivision shall not continue the right to a license.

(f) A license that has been canceled pursuant to subdivision (d) of this section may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee set forth in Section 23320 plus a penalty fee that shall be equal to 100 percent of the annual fee. A license that has been canceled pursuant to subdivision (d) of this section and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the license has been canceled.

(g) No renewal application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any office of the department during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

SEC. 4. Section 24072.2 of the Business and Professions Code is amended to read:

24072.2. Any person who has an on-sale license issued for a bona fide public eating place may exchange his or her license for a similar license for public premises, as defined in Section 23039, and any person who has such a license issued for public premises may exchange his or her license for a similar license for a bona fide public eating place. * * * The exchange may be made at the time of renewal of the license sought to be exchanged, and not more than once between renewal periods, upon the approval of the department, the payment of an exchange fee of one hundred dollars (\$100), and compliance with the provisions of this division relating to the issuance of an original license. All money collected from the fee provided for in this section shall be deposited directly in the * * * Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 5. Section 24079 of the Business and Professions Code is amended to read:

24079. (a) The purchase price or consideration that may be paid by a transferee or received by a transferor of an on-sale general license or off-sale general license originally issued on or after June 1, 1961, shall not exceed six thousand dollars (\$6,000), except that after a period of five years from the date of the original issuance of the license there shall be



no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(b) Notwithstanding subdivision (a), any original on-sale general license or any original off-sale general license for which a fee in excess of twelve thousand dollars (\$12,000) has been paid pursuant to subdivision (b) of Section 23954.5 may not be transferred for one year following its initial issuance. After one year, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(c) Any original on-sale general license or any original off-sale general license for which an original fee of twelve thousand dollars (\$12,000) was paid shall not be transferred for a purchase price in excess of twelve thousand dollars (\$12,000) for two years following its initial issuance. After two years, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

SEC. 6. Chapter 10 (commencing with Section 24749) of Division 9 of the Business and Professions Code is repealed.

SEC. 7. Section 25503.9 of the Business and Professions Code is amended to read:

25503.9. Nothing in this division prohibits a winegrower from giving or selling * * * wine, a beer manufacturer from giving or selling * * * beer, a distilled spirits manufacturer or a distilled spirits manufacturer's agent from giving or selling distilled spirits, or a licensed importer from giving or selling beer, wine, or distilled spirits at prices other than those contained in schedules filed with the department, to any of the following:

(a) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(b) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, and the members of which trade association are licensed under this division * * *. However, * * * the wine, beer, and distilled spirits shall be used solely for a convention or meeting of the nonprofit incorporated trade association.

(c) A nonprofit corporation or association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and is defined as a tax exempt organization under Section 23701a, 23701d, 23701e, 23701f, or 23701r of the Revenue and Taxation Code. Wine, beer, and distilled spirits given or sold by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or licensed importer pursuant to this subdivision may be furnished only in connection with public service or fundraising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, or similar events.

SEC. 8. Section 25503.20 of the Business and Professions Code is repealed.

SEC. 9. Section 25503.28 of the Business and Professions Code is amended to read:

25503.28. (a) Notwithstanding any other provision of this division, * * * the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, or the holder of no more than one on-sale license and one off-sale general license in a county of the 39th class only, or any officer, director, employee, or agent of that licensee, may own a * * * licensed beer manufacturer holding a license pursuant to paragraph (a) of subdivision (1) of Section 23320, * * * and may serve on the board of directors and as an officer or employee of * * * a licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee.

* * *



(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(d) This section shall remain in effect only until January 1, 1998, and as of that date is repealed.

SEC. 10. Section 25503.28 is added to the Business and Professions Code, to read:

25503.28. (a) Notwithstanding any other provision of this division, the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, may own a licensed beer manufacturer holding a license pursuant to paragraph (a) of subdivision (1) of Section 23320, and may serve on the board of directors and as an officer or employee of a licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(d) This section shall become operative on January 1, 1998.

SEC. 11. Section 25511 of the Business and Professions Code, as added by Section 1 of Chapter 907 of the Statutes of 1993, is amended and renumbered to read:

25512. (a) Notwithstanding any other provision of this division, any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses may also hold not more than 16.67 percent of the stock of a corporation that holds beer manufacturer licenses issued pursuant to paragraph (1) of subdivision (a) of Section 23320 that are located in Sacramento, Placer, El Dorado, Marin, or Napa County, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower.

(c) In enacting this section, the Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied-house interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.